STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 96-179

April 23, 1996

PUBLIC UTILITIES COMMISSION
Inquiry Into Operator Service Surcharges and Calling Rates From Places of Public Accommodation, Correctional Institutions and Other Aggregator Locations

NOTICE OF INQUIRY

WELCH, Chairman; NUGENT and HUNT, Commissioners

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I. PURPOSE OF PROCEEDING

By this Order, we open an Inquiry into the reasonableness of operator service surcharges, toll rates and other practices at telephone lines connected to payphones and other telephones at aggregator locations.

An "Inquiry" is defined in our Rules of Practice and Procedure, c. 110, § 105(h) as

> a nonadjudicatory and nonrulemaking proceeding initiated by the Commission to obtain information and comment for the purpose of determining whether a rulemaking or adjudicatory proceeding ought to be initiated or exploring policy issues and forming preliminary policies not intended to be enforceable.

It is our intent that the information acquired or preliminary findings made in this Inquiry will most likely be used in a rulemaking.

We undertake this Inquiry for of two major reasons. First, New England Telephone and Telegraph Company (d/b/a NYNEX) and AT&T of New England (jointly) have recently proposed a contract, with the State of Maine, for NYNEX and AT&T to provide service to pay phones located on State of Maine property. Those properties include state buildings, highway rest areas, state parks, and the state's correctional institutions. Concerns have been expressed to us about the level of charges that must be paid by prisoners, in light of the fact that NYNEX and AT&T have agreed to pay a substantial commission to the State for the right to be the exclusive provider at the correctional institutions.

We are also concerned about operator surcharges that are applicable in places to which the general public has access or is invited, i.e., places where the owner of the premises or the owner of the telephone selects the carrier to which telephone lines will be "presubscribed" (on a non-exclusive basis) or possibly even subscribed on an exclusive basis.

In both situations, it appears that the person placing the call and paying the charges may have economic interests different from and even conflicting with those of the service providers (carriers and telephone instrument owners) and of the person or entity owning the premises and selecting the service providers. On the one hand, the person making the call seeks low rates; on the other, the service providers and proprietor may seek to maximize revenues or, in the case of some proprietors, the commissions received in exchange for exclusive or presubscribed arrangements with carriers. Our Inquiry is intended to determine

whether this situation had led to unreasonable conduct, and, if so, whether a remedy can be fashioned.

II. BACKGROUND AND ESSENTIAL DEFINITIONS

An **"operator-assisted call"** is one that, at least historically, required the assistance of an operator to complete. Those calls include long-distance calls that a customer makes with coins (because an operator had to state the charges for the call), with a calling card or other credit card (because an operator had to take down the calling card number), collect calls and calls billed to another number. Most of those **"operator services"** are now mechanized. Even some person-to-person calls do not require a live operator. Any person, including a carrier, providing operator services is an "**operator service provider**" (OSP).

An **"operator service surcharge"** or **"operator surcharge"** is a surcharge that a customer incurs when making an operator-assisted call. The surcharge (which is the same amount regardless of the length of a call) is in addition to the per-minute toll charges that are charged to the customer.

"Presubscription" refers to the routing of all calls on a telephone line to a previously-designated carrier whenever the caller dials: only the desired number (for intrastate (local or toll) calling; hereinafter "no prefix" calling); "1" plus the desired number placing an interstate call; ("1+" calling); "0" plus the desired number ("0+" calling); or simply "0" ("0–" calling). (Generally, we will refer to 0+ and 0– calls collectively as simply 0 calls.) Calls that require an operator service and result in the imposition of operator service surcharges generally are commenced by dialing 0. When a phone line is presubscribed, a person using the line may obtain access to another carrier by dialing "10" plus that carrier's 3-digit code ("10XXX"), or, in some cases, an "800" or "950" number. The ability to gain access to a non-presubscribed carrier, by using a 10XXX code or other means, is known as **"dial-around." "Subscriber"** is the person or entity subscribing to a telephone access line provided by an LEC. Most telephone subscribers are familiar with the presubscription selection process for interstate (between states) and for interLATA calling in states with more than one LATA. That process was ordered by the 1983 modified final judgement (MFJ) in the AT&T anti-trust case that resulted in divestiture by AT&T of the regional Bell Operating Companies (BOCs). A **"LATA"** is a "local access and transport area" established by the MFJ. Many states have more than one LATA. Maine has one state-wide LATA. For the sake of simplicity, and because in Maine the terms

"LATA" and "state" are synonymous, we generally will refer to interstate and intrastate calling.

Initially under the presubscription system (immediately following the divestiture) customers chose their presubscribed interstate (interLATA) carriers by ballot. After that initial balloting, new subscribers to an LEC access line choose who will be their presubscribed (1 + or 0) interstate (or interLATA) carrier at the time they subscribe to the line, and they may change that designation any time thereafter.

By contrast, for most LATAs (and whole single LATA states, such as Maine), there is no equivalent prescription selection system for intraLATA calling. Thus, in Maine all lines are simply "subscribed" to the local exchange carrier (LEC). In Maine, the LEC is either NYNEX or a local independent telephone company (ITC). Persons may reach other intrastate interexchange carriers by using a 10XXX or other code, but persons have no choice about the carrier they will reach when dialing no prefix or 0. Except as described below at some "aggregator locations," the intrastate carrier will be the LEC. That situation will change. Under the recently enacted federal Telecommunications Act of 1996 all local exchange carriers must provide intrastate "dialing parity," i.e., the ability for customers to subscribe to a carrier other than the incumbent LEC, at least when a new local exchange carrier makes a request for and obtains interconnection with an incumbent LEC.

While there is no formal intrastate presubscription process at present, technology, e.g., redialing equipment, is available to premises or telephone instrument owners by which they may route 1 + and 0 calls (or even all calls) to a carrier other than the LEC. Such preferred or exclusive routing may be implemented at "aggregator locations." **"Aggregator locations"** include coin or calling and credit card phones located in public and semi-public locations,[1] and at non-coin phones located in hotels, motels, hospital rooms, and university dormitories. At such locations the subscriber to the line is typically the owner of the premises. The subscriber or the owner of the telephone instrument preselects the long-distance carrier and **"aggregates"** the traffic of various end users, who are often transients. 47 U.S.C. § 226(a)(2) defines an **"aggregator"** (for interstate purposes) as "any person that, in the ordinary course of its operations,

[1]For definitions of "public" and "semi public" locations, *see* Chapter 25, § 1(C) and (D).

makes telephones available to the public or transient users of its premises, for interstate telephone calls using a provider of operator services." The critical difference between the "presubscription" at aggregator locations, and the presubscription of a line to a private home or business, is that in aggregator locations the ultimate **"consumer"** or **"end user"** (the person paying for the call and for any operator surcharges) does not make the preselection.[2] For a variety of reasons, as explained below, end user consumers may have difficulty obtaining access to another carrier, or such access may be impossible.

When an end user consumer makes an "operator-assisted" (0) call at an aggregator location, the charges for any toll calls that customer makes will not be charged to the subscriber to the line.[3] Instead, the end user must pay for the call by depositing coins, by charging the call to the customer's account with the use of a calling or credit card, or by charging the call to a third-party number or to the recipient of the call (a "collect" call).

To summarize, at aggregator locations, the end user consumer who pays for calls does not have control over the carrier to which the phone line is effectively presubscribed (which may be a carrier other than the LEC) and may have some diminished control over obtaining access to an alternative carrier (e.g., the LEC or some other interexchange carrier).

III. THE TYPES AND NATURE OF CHARGES AND RATES

At aggregator locations such as those described above, the end user customer must pay per-minute toll charges, as one would at a phone line to a home or business. In addition, however, the customer must also pay an operator surcharge for making and charging calls (including coin calls) as described in Part II above.

Recently AT&T of New England (AT&T) filed proposed increases that range from 7% to 26% for all of its operator surcharges other than the surcharge for a

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[2]For interstate calling, 47 U.S.C. § 226(a)(4) defines a **"consumer"** as "a person initiating any interstate telephone call using operator services."

[3]In some cases the carrier will bill the subscriber (who is an "aggregator" for billing purposes), but the subscriber will then bill the end-user. This Inquiry does not address issues concerning the charging for calls by subscribers.

customer-dialed call with the use of a telephone company calling card. AT&T's operator surcharges for station-to-station and person-to-person customer-dialed calls (0+), other than calling card calls, presently range between $1.80 and $3.90. AT&T proposes to increase these rates to between $1.95 and $4.90. AT&T imposes an additional surcharge of $1.00 if the operator, rather than the customer, dials the call 0– calls). AT&T proposes to increase that amount to $1.15. AT&T's calling card rate is 80¢ and will not be changed. Shortly after AT&T's filing, Sprint, Frontier Communications International, Inc., and One Call also filed proposed increases for operator surcharges. Those carriers presently have operator surcharges that are virtually identical to AT&T's. They have proposed increases that also are virtually identical.[4]

By contrast, NYNEX has operator service surcharges ranging from 58¢ for customer-dialed calling card calls to $3.70 for person-to-person calls. Maine's independent telephone companies (ITCs) all concur in NYNEX's long-distance tariff, and therefore have the same surcharges as NYNEX.

For some time, the telephone industry has been one characterized by declining costs (because of more efficient technology) and declining rates. Notwithstanding those phenomena, operator surcharges have not decreased, and have often increased. The Commission's Consumer Assistance Division has received numerous complaints over the years from customers about operator surcharges and about per-minute calling rates for calls made at aggregator locations that those customers have claimed are excessive. Indeed, in many of these cases, the charges and rates have turned out to be several times higher than those charged by NYNEX. Customers have complained about charges and rates for both intrastate and interstate calling. Although we have no jurisdiction over interstate rates, the Federal Communications Commission also receives many

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[4]The described filings have been suspended pursuant to 35-A M.R.S.A. § 310 for investigation by the Commission. The AT&T case is assigned Docket No. 95-439; Sprint, Docket No. 96-044; Frontier, Docket No. 96-043; One Call, Docket No. 96-021. We request those carrier to consider withdrawing at least the operator surcharge portions of those filings until after this Inquiry and any rulemaking that may follow the Inquiry.

Two other carriers, MCI and Teleconnect, filed revisions that proposed to increase their surcharge up to AT&T's existing level. Those filings have been approved.

complaints about operator surcharges and per-minute rates at aggregator locations. Congress has enacted a statute (47 U.S.C. § 226) and the FCC has established rules that have alleviated the worst abuses in this area for interstate calling. In 1988, we commenced investigations into unauthorized service and excessive operator service charge rates by several so-called "alternative operator service" (AOS) companies.[5]

None of the companies named above who have recently proposed increased operator surcharges are among the AOS companies that previously charged excessive rates. Nevertheless, the upward pressure on charges and rates, at a time when the general trend in carrier costs and rates is downward, represents a price direction that appears to be unusual.

We believe it is likely that carrier pricing for calls placed at public phones and other aggregator locations is different than that for other locations because carriers are able to exploit market power. Despite a competitive trend in the telecommunications industry, in this sub-market, carriers apparently are able to exploit what in effect are "mini-monopolies." In extreme situations, if an end user is able to gain access only to the carrier preselected by the premises owner or the telephone instrument owner, then that carrier has very substantial market power. The customer must find an alternative phone that provides access to other carriers. Finding such an alternative may be time-consuming, inconvenient or, under some circumstances, practically impossible. In a correctional institution, access to an alternative generally will be impossible. Even if a customer may obtain access to alternative carriers at a phone that is only presubscribed, often that task is difficult, either because of some difficulty in using 10XXX codes or in reaching an 800 number (a common alternative to 10XXX access) or because of customer ignorance.

Regardless of the reason for difficulty of access, or even whether there is any "blame" to be assessed, the end result appears to confirm the market power

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[5]*See, e.g.*, *Public Utilities Commission, Re: Investigation of Alternate Operator Services*, Docket No. 88-095; *International Telecharge, Inc. (ITI) d/b/a ONCOR Communications, Inc., Re: Application for Certificate of Public Convenience and Necessity to Operate as a Reseller of Telecommunications Services in Maine*, Docket No. 88-035; and *American Operator Services, Inc. (AOSI), Re: Application for Certificate of Public Convenience and Necessity to Provide Operator-Assisted Telephone Toll Resale Service,* Docket No. 88-038.

that exists: under current market conditions, carriers plainly have sufficient market power to increase operator surcharges and sometimes per-minute rates (subject only to regulatory control), whereas in other circumstances, where customers have more immediate competitive choices, market conditions have apparently resulted in declining rates. Whatever competition among carriers that does exist in the aggregator location market apparently is not directed to convincing end-use customers to select a particular carrier through price competition. Rather, the competition apparently is among carriers to obtain access to and exploit bottleneck conditions that are controlled by premises owners and phone line subscribers. In correctional institutions, carriers bid for the right to obtain the exclusive franchise. The winning bidder pays a franchise fee (typically, a commission on each call) to the bottleneck controller and that franchise fee is built into rates to the ultimate end-user. The proposed contract between NYNEX-AT&T and the State of Maine includes a 40% commission that will be paid by NYNEX or AT&T to the State for the right to be the exclusive provider at the State's correctional institutions. A recent article in the *Lewiston Sun Journal* stated that NYNEX was paying commissions of 30% to "all" county jails.[6] An article that appeared in the *Wall Street Journal* in early 1995 described a substantial degree of competition among carriers to become exclusive providers at correctional institutions, the apparent financial benefits of such contracts, as evidenced by the commissions carriers are willing to pay, and the resulting high prices and lack of competition at the ultimate end-user level.[7]

We are not certain that such a commission system is in effect for carriers to become the exclusive or unexclusive intrastate presubscribed provider at other aggregator locations such as hotels, motels and payphones. Nevertheless, it is possible that some form of "franchise" compensation system may exist, given the fact that premises owners often configure their telephone systems to "presubscribe" to a carrier with higher operator surcharges. Other than some form of remuneration to the premises owner, there would be little incentive for a hotel or motel, institution, or pay phone owner to select a carrier that will impose a higher price on its customers rather than a lower price. In the Inquiry, we will attempt to determine the extent of such a commission system. We note that

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[6]"Phone Bills Take Toll On Prisoners' Families," *Lewiston Sun Journal*, March 2, 1996.

[7]"'Mom, It's Mugsy' - Phone Firms Wrestle For Prisoners' Business In Hot Growth Market," *Wall Street Journal*, February 15, 1995.

Congress made what amounts to a legislative finding that a commission system exists at the interstate level in its directive to the FCC to consider "limitations on the amount of commission or any other compensation given to aggregators by providers of operator service."[8]

Accordingly, in this Inquiry, we will consider the need for increased scrutiny and possible **active regulation** of operator service surcharges. The Commission has the obligation to ensure that a utility's rates are just and reasonable. 35-A M.R.S.A. § 301. Over the past several years we have issued numerous orders finding public convenience and necessity and granting authority for carriers to provide interexchange service, and that have approved initial schedules of rates, terms and conditions for an interexchange carrier to operate. Each of those orders has stated that no attempt has been made to review the carrier's rates or compare them to carriers subject to more active regulation, but have found that the carrier's rates will be just and reasonable because they are subject to a competitive market. Thus, we have not "actively" regulated the initial rates of competitive interexchange carriers and ordinarily have not investigated (pursuant to 35-A M.R.S.A. § 310) subsequent changes to their rates. By initiating this Inquiry, we call into question whether we should continue the practice of "inactive" regulation of operator service surcharges that apply at aggregator locations.

If we find that active scrutiny and regulation of operator service rates is necessary, one form of regulation we will consider is to assume presumptive validity to the rates that are currently in effect for local exchange carriers but to allow a carrier to justify higher rates if there is a reasonable cost basis for such rates. Another alternative is to refuse to approve any rates higher than the presumptive rates unless the carrier can establish on an overall basis that it is not earning a fair rate of return on its intrastate investment. This latter alternative

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[8]In 47 U.S.C. § 226(h)(4)(A), the FCC was directed to "establish regulations" to assure that "rates and charges for operator services be just and reasonable" and that such regulations shall include the "limitations on commissions" described above, unless the FCC made the finding permitted by section 222(h)(4)(B) that "market forces are securing rates and charges that are just and reasonable, as evidenced by rate levels, costs, complaints, service quality, and other relevant factors." Inasmuch as the regulations contained in 47 C.F.R. §§ 64.703-64.708 do not contain any limitation on commissions, it would appear that the FCC made the finding that market forces were securing just and reasonable rates.

may require carriers to establish intrastate costs in the traditional cost-based, rate-of-return manner. We will of course consider any other reasonable method of regulation of operator surcharges.

We note that, for interstate calling, the definition of "operator services" in 47 U.S.C. § 226(a)(7) expressly excludes assistance that involves "completion through an access code used by the consumer, with billing to an account previously established with the carrier by the consumer."[9] However, it appears that carriers are able to raise operator surcharges, even to customers that intentionally seek out a particular carrier with which they have an existing account. Indeed, AT&T is conducting an advertising campaign to promote use of its 10288 code and such numbers as 1-800-CALL ATT, suggesting that by that means customers may avoid using unknown presubscribed carriers, even as it has raised its interstate operator surcharges and has attempted to increase them in Maine. These facts suggest that the exclusion by federal statute of those interstate operator services that are accessed through a code may be unwise. In this Inquiry, we will consider whether "active" regulation should extend to calls that are initiated by the caller using the carrier's code.[10]

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[9]The entire definition reads:

> **(7)** The term "operator services" means any interstate telecommunications service initiated from an aggregator location that includes, as a component, any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an interstate telephone call through a method other than --
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> > **(A)** automatic completion with billing to the telephone from which the call originated; or
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> > **(B)** completion through an access code used by the consumer, with billing to an account previously established with the carrier by the consumer.

[10]It is likely that carriers cannot distinguish between 10XXX (or other codes) placed by the end user and those placed by an automatic redialer without the end user's knowledge. If so, and it is necessary to regulate the rates actively at those

We believe that NYNEX's operator surcharges and per-minute toll rates may appropriately serve as a benchmark or presumptive cap because they are actively regulated under the alternative form of regulation (AFOR) we adopted for NYNEX in Docket No. 94-123, and because we determined that they are reasonable. Under the AFOR, NYNEX (and the ITCs, who concur in NYNEX's toll rates and charges) may not raise those rates or charges annually by more than the annual change in the Price Regulation Index (PRI), which (simplified) is equal to annual inflation minus an annual productivity factor of 4.5%. The cost bases for NYNEX's (then NET's) operator surcharges were reviewed by the Commission in 1984 in Docket No. 83-213.[11]We found that the direct costs for the various operator surcharges ranged from 38¢ to $2.58. We approved rates ranging from 55¢ to $3.65, finding that approximately 45% of the surcharges should provide support for joint and common costs. There is every reason to believe that costs have declined since that time, particularly in light of substantially greater automation not only for calls placed with calling cards, but for collect and third-party billed calls. NYNEX's surcharges were decreased slightly at the conclusion of the recent *Pease* rate investigation.[12] While NYNEX's surcharges are almost certainly higher than NYNEX's direct cost, they are nevertheless somewhat to substantially lower than those now charged by or proposed by the IXCs. As the Commission found in 1984, it may be appropriate that the surcharges, like many other discretionary services, be priced above direct cost and provide support for joint and common costs. It may also be appropriate, therefore, to consider using them as a presumptive benchmark. Under such a presumptive rate system, a carrier would be allowed to propose rates higher than the presumptive rate. A possible justification for higher rates would be reasonable and legitimate costs in excess of the presumptive rates, although it may be questioned how reasonable such costs could be if they are substantially in excess of LEC costs (which are themselves probably lower than their rates). In considering whether carriers

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aggregator locations that do use redialers, it will also be necessary to apply the same level of rate regulation to all operator surcharges.

[11]*New England Telephone and Telegraph Company, Proposed Increase in Rates*, Docket No. 83-213, Order at 12-13.

[12]*Frederic A. Pease et al. v. New England Telephone and Telegraph Company d/b/a NYNEX, Re: Complaint Requesting Commission Investigation of the Level of Revenues Being Earned by NYNEX and Determination of Whether Toll and Local Rates Should be Reduced*, Docket No. 94-254.

should be allowed to charge rates in excess of LEC rates, we will also consider whether commissions or other forms of renumeration to line subscribers who presubscribe to a carrier, e.g., premises or telephone instrument owners, should be a legitimate component of a carrier's cost of service.

We also intend to consider whether it may be necessary to regulate in a more active manner the level of per-minute toll rates charged by carriers at aggregator locations. For the most part, we understand that carriers charge the same per-minute toll rates at aggregator locations as they do at all other locations, such as locations at which the end user is also the subscriber to the line and can presubscribe to a carrier. On the other hand, at least one carrier, One Call d/b/a Opticom, charges higher per-minute rates at aggregator locations than it does at other locations. (Those rates are exactly 10% higher than the per-minute rates charged by AT&T.) In the past, however, the AOS companies that we investigated charged very substantially higher per-minute rates in addition to very high operator surcharge rates. Absent some kind of active regulation of these rates, an exclusive or presubscribed provider may be able to charge excessive per-minute toll rates at aggregator locations. A requirement only that a carrier charge rates that are no higher than those charged at non-aggregator locations may not constitute effective regulation, however. A carrier wishing to specialize in aggregator traffic might set its per-minute rates at levels substantially above those charged by LECs and other carriers at non-aggregator locations, and might not be concerned that it would also have to charge the same high rates at non-aggregator locations because it did not care about obtaining such traffic. We therefore will address whether per-minute rates shall be subject to regulation similar to any that might be considered for operator surcharges.[13]

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[13]The use of LEC rates as a presumptive "cap" may not be appropriate until after revision of our rule governing access charges, Chapter 280. Chapter 280 does not require that interexchange access charges be distance sensitive. Accordingly, non-LEC interexchange carriers pay the same access charges regardless of the distance of the call and pass those costs along in their retail rates. Almost all IXCs charge the same rate for long-haul toll calls as for short-haul toll calls. By contrast, NYNEX's retail rates are distance-sensitive. Accordingly, most IXCs intrastate toll rates are the same for all distances. Some of their long-haul rates are slightly lower than NYNEX's. Their short-haul rates are higher.

One further concern about rates and charges that apply at public, semi-public and other aggregator locations has come to our attention. Under NYNEX's tariff, if a customer uses a calling card to make a local call (e.g., because the customer does not have 10¢, 20¢ or 25¢ in coins for the local call rate or may be unaware of the rates and charges for local calling with a calling card), the customer is charged the calling card rate of 58¢. In addition, however, the customer is charged a toll rate for the local call rather than the local coin rate. This circumstance has been brought to our attention because of prisoners may make fairly lengthy local calls to family or others who live in the local calling area, and the recipient of the call may receive a substantial toll bill. Nevertheless, we consider it to be a concern at all aggregator locations. We are unaware of any justification for the policy, and will explore its validity in this proceeding.

IV. OTHER CUSTOMER PROTECTION REQUIREMENTS

We will also consider consumer protection measures other than the direct regulation of operator service surcharges and per-minute rates. As noted above, the ability to gain access to other carriers other than the carrier that is effectively "presubscribed" (or exclusively subscribed) is known as "dial-around." If customers are able to "dial-around" with minimal difficulty and dial-around information is readily available and understandable, then competitive forces may provide the kind of protection against excessive operator charges that currently may be lacking.

Presently, Chapter 25 of our rules requires limited "dial-around." Section 5(B) states that must be able to gain access to "all locally accessible long-distance common carriers." The rule therefore allows a connection to LEC-owned coin and calling card telephones (LECCOTs) and customer-owned coin and calling card telephones (COCOTS) located in "public places," shall allow customers a carrier other than the LEC, when a customer dials 1 + , 0 + or 0 –, but a customer using a LECCOT or COCOT must also be able (through 10XXX dialing or an 800 number, for example) to gain assess to other carriers. A "public location" is defined as "one on public property or a thoroughfare or one to which entry by members of the public is generally not monitored or restricted." Ch. 25, § 1(C). The definition therefore excludes hotel and motel rooms and correctional institutions.[14]

[14]Federal statute and FCC rules (47 U.S.C. § 226(c) and 47 C.F.R. § 64.704) also require that customers have the ability to use 800, 950 or equal access

The Inquiry will consider whether the dial-around requirement should be expanded to other aggregator locations and whether it should apply to all telephone instruments, regardless of whether they are coin or calling card "operated" LECCOTs or COCOTs.

Customers will not dial-around if they do not know how to do so. We will consider whether presubscribed carriers must provide either oral or written information about how to access other carriers. (Some information requirements already apply to COCOT and LECCOT owners.)

Customers also may not know that better rates and surcharges may be available if they dial around. We will consider whether possible information requirements applicable to presubscribed carriers should be required to provide oral or written price comparisons to persons dialing 1+, 0+ or 0–.

Related to a dial-around requirement are requirements that operator service providers provide audible and posted **"branding."** As defined in 47 U.S.C. § 226(b)(1)(A) (for interstate calling) branding is the requirement that an OSP must "identify itself, audibly and distinctly, to the consumer at the beginning of each call and before the consumer incurs any charge for the call." Section 226(c)(1)(A) requires the "aggregator to post the name and toll-free number of the OSP." In this Inquiry, we shall consider whether audible branding shall be required by both presubscribed OSPs (so that consumers who did dial-around would know whether they had successfully reached their preferred carrier).[15]

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codes to "obtain access to the consumer's desired provider of operator services," i.e., to "dial around" the presubscribed carrier. Unlike our Chapter 25, the federal rules apply to all aggregator locations, including hotel and motel rooms. 47 U.S.C. § 226(a)(2) defines an **"aggregator"** as "any person that, in the ordinary course of its operations, makes telephones available to the public on transient users of its premises, for interstate telephone calls using a provider of operator services." The federal definition applies, of course, only to interstate calling and interstate presubscription.

[15]35-A M.R.S.A. § 7305(1)(D) requires persons owning or managing a "public telephone" to provide written notice that states that "identity of *the* long-distance company that serves the public telephone" (emphasis added) and its rates and charges. It is possible to interpret the requirement to require information about the presubscribed carrier, but the provision is far from clear.

V. ADDITIONAL CONSIDERATIONS FOR CORRECTIONAL INSTITUTIONS

We recognize that several different circumstances may apply to prisons and other correctional institutions. For example, we understand that for reasons of security and to prevent fraud, correctional institution administrators generally restrict all outgoing calls to collect calls. Thus, prisoners may not use calling cards or charge calls to any person or billing account other than the recipient. In addition, correctional authorities apparently generally prevent access to carriers other than the carrier that has the exclusive contract with the correctional institution. We understand that the justification for this preference is that non-collect or other problematic calls will be minimized by restricting access to a single carrier.[16] We will consider the validity of these concerns, or alternative means of accommodating these concerns, while also taking into account our concern that rates and surcharges applicable to prisoners are reasonable. NYNEX's operator surcharges for placing an intrastate collect call are more than twice as high as the calling card rate. NYNEX's tariffed rate for station-to-station collect calls is $1.30. (Inmates are not permitted to make person-to-person calls.) Under the proposed contract with the State, the tariffed rate for a collect call would be $1.30.[17] By contrast, NYNEX's tariff calling card surcharge is 58¢. Because of

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[16]As noted above, the federal statute and rules require "dial-around" for interstate calling at all aggregator locations. However, the FCC has ruled that correctional institutions are not aggregators because the definition of "aggregator" in 42 U.S.C. § 226(a)(2) and its own regulation applies only to a person "that, in the ordinary course of business, makes telephones available to the public or to transient users of its premises . . . ." FCC OSP Order at 2752.

[17]Even though the contract specifies that NYNEX will charge its tariffed rates and tariffed operator surcharges, the contract also provides for the payment of commissions to the subscriber. Those commissions are in effect a discount from the tariffed rate. It is therefore a "special contract" that requires approval by the Commission pursuant to 35-A M.R.S.A. § 703(3-A). When finalized, we expect that NYNEX will file it for approval. To the extent that we consider issues in the approval case that are described in this Inquiry, it may not be necessary to consider them here. However, it is possible that some of the issues concerning correctional institutions are not addressed by the contract, and we may have to address all issues in the Inquiry because of operator services that are provided to county jails. (The contract with the State applies only to the State's correction institutions, not to county institutions.)

increased automation, including automated collect calls, there is some reason to believe that those prices may not reflect costs, specifically, the cost differential between providing billing service for a calling card call and for a collect call.[18] We therefore believe we should give some consideration to the surcharge level for collect cards in the correctional institution setting, where the end-user may make only collect calls and cannot use calling cards. One possibility we will consider is whether the surcharge for station-to-station collect calls should be set at or near the level for the calling card surcharge.

We note that under the contract AT&T will be providing operator services and connections for interstate calls. We have no jurisdiction over interstate calling rates, and this Inquiry, therefore, will not address AT&T's proposed rates or surcharges for the state's correctional institutions.

We do recognize that the commissions received by the state correctional institutions and by county correctional centers and jails for the right of a carrier to be an exclusive provider are used for an important public purpose. They help fund either ongoing prison programs or special programs for prisoners.[19] We also recognize the difficulty of proper funding for correctional institutions in a tight fiscal climate. On the other hand, if carriers are able to cover their costs and also provide 30% or 40% commissions, a question could be raised whether the person receiving calls from prisoners (often a family member) is paying reasonable, cost-based rates.[20]It is the obligation of this Commission to ensure all rates and charges by telecommunications carriers are just and reasonable. In this proceeding, we will consider the legitimate interests of all concerned parties.

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[18]For an automated collect call, the person placing the call will be asked to speak his or her name. The person answering will hear a pre-recorded message stating: "Do you wish to accept a collect call from [recorded name]?," and will be told codes to dial or the words to say to accept or reject the call.

[19]We understand that the commissions presently paid to the Maine State Prison (at 14% of revenues rather than the 40% proposed in the new contract) are used for providing athletic and other equipment for prisoners.

[20]Customers with high calling volumes are typically provided a substantial discount by NYNEX, either through its NETSAVER service or by a special contract.

We have an additional area of concern related to the lack of an explicit requirement that carriers serving correctional institutions perform "call verification" for collect calls placed from correctional institutions. LECs, IXCs and operator service providers generally subscribe to industry-wide databases to identify the telephone numbers of persons not wishing to accept collect or third-party-billed calls, so that equipment or operators assisting persons wishing to make such calls will block the completion of those calls. This process is termed "call verification," and, for a monthly charge, customers may subscribe to a blocking service that blocks all collect and third-party-billed calls from most, if not all, Maine LECs. We have received complaints from Maine consumers who had subscribed to the blocking service that collect calls from some correctional institutions were not being blocked, apparently because the carrier serving the institution did not perform the customary call verification but rather passed all calls for completion.[21] In this proceeding, we will consider whether to require that carriers serving correctional institutions perform call verification of all calls placed from payphones in those institutions.

VI. THE EFFECT OF THE TELECOMMUNICATIONS ACT OF 1996

The Telecommunications Act of 1996 contains provisions (enacted as 47 U.S.C. § 276) requiring FCC rulemakings that will address compensation by carriers to "payphone service providers" and that will:

> provide for all payphone service providers to have the right to negotiate with the location provider on the location provider's selecting and contracting with, and, subject to the terms of any agreement with the location provider, to select and contract with, the carriers that carry intraLATA calls from their payphones.

[21]In one example, an abused spouse requested her LEC to block incoming collect calls from her home telephone because she was being threatened by her spouse, then in custody in Maine. When the collect calls were nevertheless received, she advised her LEC that she became very uncomfortable and felt threatened if she refused to accept calls directly placed by her spouse, and complained that the blocking service to which she subscribed was ineffective in blocking all incoming collect and third-party calls.

47 U.S.C. § 276(b)(E). Section 296(c) preempts any "inconsistent" state regulations.

This provision apparently guarantees equal negotiating rights to all payphone service providers, and for payphone service providers to select the carriers who will carry calls.[22] It does not appear to preclude state regulation of the rates or operator surcharges that carriers charge at payphones. In the absence of express preemption, it would be unreasonable to read the provision as allowing contracting parties to agree to unjust and unreasonable rates that are not subject to state regulation. In this proceeding we will consider the extent, if any, preemptive effect of the payphone provisions of the Telecommunications Act on our authority to regulate rates, charges and other practices at payphone locations.

Section 276 states that a Bell operating company "shall (1) not subsidize its payphone service directly or indirectly from its telephone exchange service operations or its exchange access operations; and (2) shall not prefer or discriminate in favor of its payphone service." Section 276(b)(1)(B) and (C) require the FCC to prescribe regulations that will implement the policy goals in subsection (a). Pursuant to section 276(c), any state requirements that are inconsistent with federal regulations are preempted. We will monitor any federal proceeding and consider its effect on our actions. Commenters are welcome to provide suggests as to what aspect of payphone operations might be considered "subsidized."

VII. OTHER ISSUES

In this proceeding we may consider the enforceability of current or future regulations and methods that might result in more effective and cost-efficient enforcement.

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[22] 47 U.S.C. s 276(d)defines "payphone service" as "the provision of public or semi-public pay telephones, the provision of inmate telephone service in correctional institutions, and any ancillary services." The definition therefore excludes non-payphones, e.g., those in hotel and motel rooms. The Act does not define "location provider," but many location providers are likely to be "aggregators" as defined in Section 226.

We may also consider the problems caused for intrastate access reporting and payment by the fact that some carriers use and market the use of non-10XXX codes, e.g., numbers.

VIII. SUMMARY OF ISSUES

In the Inquiry, we will consider the following issues:

1. Whether we should make a finding that telephone service at aggregator locations such as correctional institutions, hotels, motels, hospitals and other locations to which the public has access, but does not the control over the preselection of carriers, is either uncompetitive or is not sufficiently competitive to provide reasonable prices to the public, and therefore requires active regulation of operator surcharges and per-minute rates;

2. If the Commission should actively regulate the operator surcharges and per-minute rates that are applicable in aggregator locations, the form of that regulation and the costs that may legitimately be included in determining the reasonableness of rates.

3. Whether the Commission should expand the present "dial-around" requirement that requires customer access to all carriers other than the presubscribed carrier to all aggregator locations, and whether it should impose written or oral (or both) branding requirements.

    - should "dial-around" or "branding" requirements apply to correctional institutions;

4. Should the Commission require the presubscribed carrier to provide the person dialing 1+ or 0 certain information about other carriers, and should that information include:

    - the fact that other carriers may be accessed from the phone in question;

    - the means by which other carriers may be accessed;

- the actual access codes (10XXX or other codes) by which other carriers may be accessed;

- the fact that the presubscribed carrier charges per-minute rates and/or operator surcharges that are higher than some other carrier and, if so, the identity of those other carrier(s);

5. If some or all of the information suggesting in paragraph 4 above should be provided by presubscribed carriers, whether that information be provided in a posted written form, by a voice message or both?

6. Should carriers be permitted to charge toll rates for local calls when a customer uses a calling card or other operator service to charge a local call?

7. May the Commission make a finding that the cost for providing automated collect calls (where electronic equipment provides all functions, including voice messages) is similar to the costs for processing a calling card call?

8. If incarcerated persons are limited to making collect calls, and, if the cost for processing a collect call is essentially the same as that for processing or calling card call, should we consider ordering that the surcharge for station-to-station collect calls be reduced to a level no higher than the calling card surcharge?

9. Should the Commission require that call verification be performed by all carriers serving payphones in correctional institutions?

10. Whether the Telecommunications Act of 1996 imposes any requirements or restrictions on the State of Maine's authority to enact regulations addressing the issues described in this Notice of Inquiry.

11. Methods of enforcing current and possible future regulations concerning operator service rates and charges, "dial-around" requirements and posting, branding and rate information requirements.

IX. PARTICIPATION

There are no formal parties to an Inquiry and the proceedings may be informal. This Notice will be sent to all local exchange carriers, all interexchange carriers, the Departments of Administration and Corrections of the State of Maine, the sheriffs of each of Maine's counties, the chairpersons of the Joint Standing Committee on Corrections of the Maine Legislature, members of the Joint Standing Committee on Energy and Utilities, the Maine Hospital Association, the Maine Innkeepers Association, the Maine Campground Owners Association and all colleges and universities in the state having residential dormitories. **Any person may be a participant in this proceeding by informing the Commission in writing of his or her intent to participate. That notice may be included in comments filed pursuant to Part IX below.** A person who only desires to be kept informed of Commission actions and decisions should ask to be listed as "interested person" and may do so in writing or by calling the Commission at (207) 287-3831.

X. INITIAL COMMENTS

Any participant (*see* Part VIII above) may file comments addressing any of the issues raised in this Notice. Comments shall be due on June 28, 1996.

Dated at Augusta, Maine, this 23th day of April, 1996.

BY ORDER OF THE COMMISSION

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Christopher P. Simpson
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent

Hunt